



February 11, 2002

Ms. Ruth H. Soucy
Deputy General Counsel
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2002-0615

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158464.

The Comptroller of Public Accounts (the "comptroller") received a request for "a listing of the top 50 retailers by company name (not exact retailer store locations, simply company names) by gross Texas sales tax base and amount subject to Texas state sales tax" for a specified period of time. You inform us that no such list exists, but that the comptroller does maintain a list of the largest taxpayers.¹ You further inform us that the requestor seeks to review this list. You claim, however, that the list is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception claimed and reviewed the representative sample of information submitted.²

You contend that the requested list of the top 50 taxpayers is made confidential under section 151.027 of the Tax Code and thus must be withheld from the public pursuant to section 552.101 of the Government Code. Section 552.101 of the Government Code excepts

¹We note that the Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). However, we further note that a governmental body must make a good faith effort to relate a request to information it holds, which the comptroller has apparently done in this case. Open Records Decision No. 561 (1990).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

from required public disclosure information that is confidential by law, including information made confidential by statute. Section 151.027(a) provides confidentiality for information collected under the Limited Sales, Excise, and Use Tax Act and reads as follows:

(a) Information in or derived from a record, report, or other instrument required to be furnished under this chapter is confidential and not open to public inspection, except for information set forth in a lien filed under this title or a permit issued under this chapter to a seller and except as provided by Subsection (c) of this section.

This provision prevents the disclosure of information and data obtained or “derived” from a taxpayer’s records. In this instance, you indicate that the submitted list consists of information in or derived from a report or other instrument required to be submitted by the taxpayer pursuant to chapter 151 of the Tax Code. Consequently, we conclude that the list of taxpayers you submitted to this office for review is confidential pursuant to section 151.027(a) of the Tax Code and must therefore be withheld from the public pursuant to section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

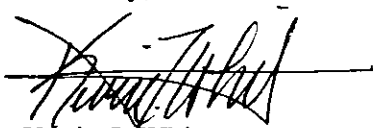
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin J. White', is written over a horizontal line.

Kevin J. White
Assistant Attorney General
Open Records Division

KJW/sdk

Ref: ID# 158464

Enc. Submitted documents

c: Ms. Tasha Demary
Econ One
1004 Prairie Street, 2nd Floor
Houston, Texas 77002
(w/o enclosures)